Questioned by the court he said that he was hung up from the hook for about 10 minutes, with his feet off the ground. That hurt his wrists on which there were bruises, which remained for about two weeks. He did not seek any treatment.

In examination-in-chief the accused also said that after he had been beaten up in this way, he was taken to a second room where there were only him and Inspector Ang, who then recorded a statement from him. He said that he did not show the bruises to the Inspector, nor told him about them. The Inspector did not assault him, but simply threatened him.

The voluntariness of the confession being in issue, it was up to the prosecution to prove beyond reasonable doubt that it was voluntary. They did not however call him to contradict the accused, though Inspector Lias was in court. Nevertheless, the learned Deputy submitted that it was admissible because, he said, Mr. Karpal Singh had not, when the Inspector was giving evidence earlier, cross-examined him. The learned judge agreed.

We are of the opinion that this failure by Mr. Karpal Singh was not fatal. The voluntariness of the statement was not in issue when Inspector Lias was giving evidence earlier in the general trial. It came into issue only during the trial within a trial. As the Inspector was specifically identified at the trial within a trial as one of the persons who had assaulted the accused, he should have been called by the prosecution to contradict the accused. It would have been very easy for the prosecution to call the Inspector because he had been identified and was available. Failure by the prosecution to do so should have made the learned trial judge scrutinize with great care the voluntariness of the alleged confession, particularly in a very serious case like this for which the punishment is death or life imprisonment.

With respect we agree with Choor Singh J. in *Public Prosecutor* v. *Ibrahim Mastari*,[1] an unreported case referred to by *S. Chandra Mohan* in his article "Admissibility and use of Statements made to Police Officers — Re-examination (Part II)", when he said:

"If the accused alleges that he was assaulted by a police officer" — who has been identified — "and that in consequence thereof he made an incriminating statement, the prosecution must call the officer concerned to give evidence not only for the purpose of assisting the court to ascertain the truth of the allegation but also for the purpose of giving him an opportunity to rebut the accused's allegation."

In view of our conclusion on Mr. Karpal Singh's first contention, it is unnecessary for us to say anything about his second, for anything we say on it would be *obiter*. Nevertheless, we would observe that generally speaking it is desirable that a suspect be interrogated in a language in which he is at home; but we would not go further by saying that if his mother tongue is Teochew he must be interrogated only in Teochew, and that if he is not, his statement is necessarily inadmissible. To do so would unnecessarily tie up the hands of the police in remote parts of the country, such as Ulu Kelantan or Upper Perak. This is a multi-racial and multi-lingual country, and we cannot shut our eyes to the fact that many Malaysians have not one, but two, mother tongues, and while they are master of no particular language, yet converse easily in several languages for every day purposes. This is especially so among the Chinese, for many of them understand at least two Chinese dialects. What is important is that a person interrogated should understand the language used by the interrogator. In most cases a suspect is not being asked about concepts and abstract ideas, to express which he needs to be questioned and to speak in a language he is most at home in; but about events and concrete things. About these he may be questioned and is expected to give his own version only in language of the kind ordinarily used in the bazaar.

The appellant's conviction is quashed and sentence set aside.

Appeal allowed.

Solicitor: *Karpal Singh & Co.*

APPENDIX

PUBLIC PROSECUTOR v. IBRAHIM BIN MASTARI

[O.Cr.J. (Choor Singh J.) March 9, 1966]

[Singapore — Emergency Criminal Case No. 5 of 1965]

Criminal Law and Procedure — Cautioned Statement — Not recorded in accordance with rules — Caution — Questions put to accused — Interpretation — Allegation of assault by police — Public officer should be called to contradict allegation — Necessity of giving caution before questioning accused — Evidence Ordinance (Cap. 4), s. 27 Criminal Procedure Code (Cap. 132), s. 121(5).

Evidence — Statement leading to discovery of fact — Accused in custody — Necessity for caution — Criminal Procedure Code (Cap. 132), s. 121(5) — Evidence Ordinance (Cap. 4), s. 27.

In this case the accused was charged with possession of explosives. The evidence against him consisted of (a) a cautioned statement recorded from him and (b) evidence that he made a statement and led the police party to his house where the explosives were found buried.

Held: (1) the cautioned statement was not admissible as it was not recorded in accordance with the provisions of the rules relating to statements from accused persons laid down in Schedule E of the Criminal Procedure Code;

(2) the proper caution was not given to the accused. It is essential that the caution should be explained to him in his own language or a language which he understands and the court must be satisfied that the officer recording the statement and the accused fully understand each other;

(3) where an accused person alleges that he was assaulted by a police officer and that in consequence thereof he made an incriminating statement, it is desirable for the prosecution to call the officer in question as a witness so that the officer can give his version of the incident;

(4) Section 27 of the Evidence Ordinance must be read subject to section 121(5) of the Criminal Procedure Code. When the prosecution desire to invoke section 27 they must satisfy the court that the information received from the accused which is tendered under section 27 of the Evidence Ordinance was received after the caution had been properly administered. In this case as the accused had not been properly cautioned, his statement that he had buried the explosives in the compound of his house was inadmissible.

EMERGENCY CRIMINAL CASE.

Choor Singh J. (delivering oral judgment): The cautioned statement made by the accused in this case is not admissible in evidence because it was not recorded in accordance with

the provisions of the Rules relating to statements from accused persons laid down in Schedule E of the Criminal Procedure Code.

The caution administered to the accused was the one laid down in rule 6. This caution is administered to an accused person when he is formally charged by the police. In this case no formal charge was framed or read out to the accused and the caution in rule 6 was therefore inapplicable.

The inspector who recorded the statement made a mistake in interpreting the caution to the accused in the Malay language by telling him that whatever he said would be taken down and used in evidence. Rule 6 expressly provides that care should be taken to avoid any suggestion to the accused that his answers can only be used against him. The proper words that should be used are that whatever the accused says will be taken down in writing and may be given in evidence.

After recording the statement which the accused is alleged to have volunteered, the Inspector put three questions to the accused. Rule 8 provides that an accused person making a voluntary statement must not be cross-examined and no questions should be put to him except for the purpose of removing ambiguity in what he has actually said. The three questions put by the Inspector to the accused in this case were not put for the purpose of removing ambiguity.

When a police officer desires to record a cautioned statement from a person accused of an offence and who does not understand the English language, the statement should be recorded through a competent interpreter. The whole proceedings should be interpreted to the accused in his own language or in a language which he understands through an interpreter competent to interpret in that language. There are already many judicial prouncements on this question of interpretation to an accused person who does not understand English. The court must be satisfied that the officer recording the statement and the accused fully understood each other. In this case I am not so satisfied.

It must be borne in mind that a person in custody cannot be questioned without being first cautioned that he is not obliged to say anything, and it is essential that this caution should be correctly explained to him in his own language or in a language which he understands. The abovementioned Rules are part of our law and must be strictly complied with by any police officer who wishes to question an accused person in custody. Failure to comply with any of the Rules vitiates the statement recorded and makes it inadmissible in evidence. For these reasons I hold that the cautioned statement of the accused is not admissible in evidence.

I must make it clear that I express no opinion on the accused's allegation that he was assaulted by Inspector Moorthi because Inspector Moorthi is not a witness in this case and has not been given an opportunity to deny this allegation. Furthermore, it is unnecessary for me to express any opinion on this allegation because there are ample reasons for holding that the cautioned statement is not admissible in evidence in this case. I would only observe that where an accused person alleges that he was assaulted by a police officer and that in consequence thereof he made an incriminating statement, it is desirable in those circumstances for the prosecution to call the officer in question as a witness so that the officer can give his version of the incident. This is desirable not only for the purpose of assisting the court to ascertain the truth of the allegation made by the accused, but also for the purpose of giving the officer concerned an opportunity to rebut the allegation of the accused. Furthermore, the burden of proving that the accused's statement was made voluntarily is on the prosecution. And when the accused alleges that he has been the victim of an assault at the hands of the police, I fail to see how the prosecution can discharge their burden without calling evidence to rebut that allegation. In this case, for example, no evidence has been led by the prosecution on the issue of assault and the accused's allegation that he was assaulted, remains unanswered.

The cautioned statement having been held to be inadmissible, the only other evidence against the accused is that he led the police party to his house and in the compound of his house he dug up a parcel of explosives which were buried about 70 feet away from his house. The accused is stated to have taken the police to his house as a result of questioning by A.S.P. Omar Rejab. The accused was arrested on November 22, 1965, at 1.30 p.m. under the Internal Security Act and was taken to the Special Branch. Soon after that he was questioned at the Special Branch by A.S.P. Omar Rejab who says that before questioning the accused he cautioned him in the Malay language in the following terms:—

> "You are not compelled or forced to say anything, but whatever you say ought to be used in the statement."

In the course of the questioning the accused is alleged to have said, "I buried the explosives in the compound near my house," and it was as a result of this information that the accused was taken to his house. In my view A.S.P. Omar Rejab failed to comply with the provisions of rule 5. The accused, being in custody, A.S.P. Omar Rejab had no right to question him without the proper caution being first administered to the accused. As the accused does not speak English the caution had to be administered in a language which the accused understood. In administering the caution to the accused in the Malay language, A.S.P. Omar Rejab clearly departed from the words of the caution laid down in rule 5. This again emphasises how important it is that the caution should be correctly stated to the accused in a language which he understands. It seems to me that section 27 of the Evidence Ordinance must be read subject to section 121(5) of the Criminal Procedure Code. The proviso to section 121(5) of the Criminal Procedure Code provides that a statement by a person charged with an offence made by him after his arrest is not admissible unless the court is satisfied that he was duly cautioned in accordance with the abovementioned Rules. When the prosecution desire to invoke section 27 of the Evidence Ordinance they must satisfy the court that the information received from the accused which is tendered under section 27 of the Evidence Ordinance was received after the caution had been duly administered. In my view, as the accused had not been properly cautioned, his statement that he had buried the explosives in the compound of his house, is inadmissible. But evidence of the fact that he took the police to his house and there dug up the explosives is admissible. This fact by itself, however, is insufficient to warrant the inference that the explosives were in the control of the accused. Accordingly, there is no evidence that the explosives found in the compound of his house were under his control. He has no case to answer and is therefore acquitted and discharged.

Accused acquitted.

NATIONAL UNION OF HOTEL, BAR AND RESTAURANT WORKERS v. MINISTER OF LABOUR AND MANPOWER

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat F.J. & Abdoolcader J.) April 16 & May 22, 1980]

[Penang — Federal Court Civil Appeal No. 14 of 1980]

Administrative Law — Certiorari to quash decision of Minister — Refusal to refer dispute to Industrial Court — Discretion of Minister — Discretion exercised in accordance with intention of Act — Court should not interfere — Industrial Relations Act, 1967, ss. 18(1), 20 & 26(2).

Industrial Law — Dismissal — Application to refer matter to Industrial Court — Minister exercising his discretion not to refer matter to Industrial Court — Discretion properly exercised — Industrial Relations Act, 1967, ss. 18(1), 20 & 26(2).

In this case the facts were that five hotel workers, who were union members and one other worker (a non-union member) were found gambling in the hotel premises. An inquiry was held and they were all dismissed. The non-union member made representations to the Director-General for Industrial Relations. He denied that he was gambling. The Minister thereupon referred his case to the Industrial Court as an industrial dispute. The appellants on behalf of the five union workers then reported the trade dispute arising from their dismissal to the Minister and requested that it be referred to the Industrial Court. Inquiries were made which